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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,436	12/27/2001	John Thomas Aylward	34976/238448	2496
826	7590	01/23/2004		
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			EXAMINER DESAI, HEMANT	
			ART UNIT	PAPER NUMBER
			3721	//

DATE MAILED: 01/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicant's Name

10/034,436

Applicant(s)

AYLWARD ET AL.

Examiner

Hemant M Desai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Mailing of Letter Of Suspension and Indication of Allowability in Paper # 10 is vacated. Action on merits as follows:

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Amborn et al. (6311462).

Amborn et al. Disclose an assembly for handling and packaging pharmaceutical dosage forms, including an infeed structure (22, fig. 1) for accepting a series of dosage forms including a surface (10, fig. 2) movable in a downstream direction (11, fig. 2), a laning structure (35, fig. 4) defining a plurality of lanes (40, fig. 4) extending in the downstream direction and having a downstream end (38, fig. 4), and a plenum structure (32, fig. 4) extending from the infeed structure (22) to the laning structure (35) including a guide portion (25, fig. 2) for guiding dosage forms carried by the surface into the laning structure, a form handling device (38, fig. 4) for receiving dosage forms and transporting dosage forms from the laning structure to a packaging device (90, fig. 4A), a dump gate (80, fig. 4) having a closed position wherein the dump gate blocks the

lanes at the downstream ends thereof, and an open position in which the dump gate does not block the lanes, and a time controller for opening the dump gate after the handling device receives dosage forms (see col. 7, lines 20-28), which meets all the claimed limitations.

Regarding claim 2, the timed controller further comprises a computer communicating with the form handling device and the dump gate (see col. 6, lines 20-30).

Regarding claim 3, the assembly further comprising a guide wall structure (14, fig. 5) defining the guide portion (25) and including a curved portion (45, fig. 3).

Regarding claim 4, the guide wall structure (14) also defines the plenum structure (32), the plenum structure including a plenum entry (28, fig. 4) and the guide wall structure being shaped to guide dosage forms so that dosage forms enter the plenum structure at the plenum entry adjacent a first side of the laning structure (35, fig. 4) and travel in a lateral direction transverse to the downstream direction toward a second side (47, fig. 4) of the laning structure before entering the lanes.

Regarding claims 5 and 6, the curved portion includes a movable member (60, fig. 10) and a biasing means (73, fig. 11) for vibrating it for reliving jamming of dosage forms.

Regarding claim 7, the laning structure (35) includes a surface for supporting the dosage forms slopping in the downstream direction to the dump gate (80) so that debris is carried out of the laning structure (see col. 5, lines 63-66) by the surface when the dump gate is in open position.

Response to Arguments

4. Applicant's arguments filed 10/29/2003 have been fully considered but they are not persuasive. Upon reconsideration, applicant is not entitled to claim priority of the 371 application ((PCT/US99/05103, filing date 3/9/1999) or provisional application (60/077,363, filling date 3/9/1998) because there is no common inventor, see 35 USC 120 and 35 USC 119 (e).

5. 37 CFR 1.131 is also not applicable because the reference, 6,311,462 (Amborn et al.) is a U.S. patent or U.S. patent that claims the rejected invention. An affidavit or declaration is inappropriate under 37 CFR 1.131(a) when the reference is claiming the same patentable invention, see MPEP § 2306. If the reference and this application are not commonly owned, the reference can only be overcome by establishing priority of invention through interference proceedings. See MPEP Chapter 2300 for information on initiating interference proceedings. However, the effective filing date of application (12/27/2001) is more than 3 months after the effective filing date of Patent- 6311462 (3/9/1998), the applicant must proceed under 37 CFR 1.608(b), see MPEP 2308.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M Desai whose telephone number is (703) 308-5830. The examiner can normally be reached on 7:00 AM-5:30 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Hemant M Desai
Examiner
Art Unit 3721

HMD

A handwritten signature in black ink, appearing to read 'Hemant M Desai', with a stylized flourish at the end.